

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

TOTAL REBUILD, INC.)	
)	
Plaintiff/Counterclaim-Defendant,)	Civil Action No. 6:15-cv-01855-BAJ-CBW
)	
v.)	JUDGE BRIAN A. JACKSON
)	
PHC FLUID POWER, L.L.C.,)	JURY TRIAL DEMANDED
)	
Defendant/Counterclaim-Plaintiff.)	
)	

**DEFENDANT PHC FLUID POWER, L.L.C.’S MOTION IN LIMINE REGARDING
SYSTEMS WITH TESTING EQUIPMENT OUTSIDE OF HOUSING**

Pursuant to Rules 402 and 403 of the Federal Rules of Civil Procedure, Defendant/Counterclaim-Plaintiff PHC Fluid Power, L.L.C (“PHC”) respectfully moves to exclude and preclude Plaintiff from offering evidence, by introduction, reference, declaration, or testimony, of any allegation or assertion that PHC has directly or indirectly infringed claims 3, 4, 5, 11, 12, 13, 14, 15, 18, and/or 19 United States Patent Number 8,146,428 (“428 Patent”) by making, using, selling, offering for sale, and/or importing a safety system for testing high-pressure devices in which the high-pressure testing equipment is located outside an explosion proof housing.

By the clear language of the claims, the high-pressure testing equipment must be located “within” an explosion-proof safety housing or placed in an explosion-proof safety housing to infringe under any of the claims of the ’428 Patent. Except as evidence of prior art for invalidity, inequitable conduct, or other affirmative defenses raised by PHC, safety systems in which the high-pressure testing equipment is located outside the housing is not relevant under Rule 401 of the

Federal Rules of Evidence and should be excluded as inadmissible under Rule 402 of the Federal Rules of Evidence.

Such evidence also should be excluded under Rule 403 of the Federal Rules of Evidence because it would be confusing to jurors, mislead the jury, cause undue delay, and waste time because the jury would need to review system, listen to days of testimony, and review exhibits that cannot result in liability. There is no reason to require the jurors or the Court to listen to and go through such unnecessary evidence. Although PHC asserts that there are not infringing systems, the only reason to include systems that cannot *in any circumstance* infringe would be to give the false appearance that PHC has a large number of infringing systems or to encourage the jury to apply a “split-the-baby” approach to liability and damages. Admission of such evidence would, therefore, be highly prejudicial against PHC.

In addition to its contemporaneously filed Memorandum, PHC submits the following in support of this Motion: Plaintiff’s Third Supplemental Infringement Contentions (Exhibit 1), Plaintiff’s Responses to PHC’s First Interrogatories and Certification (collective Exhibit 2), and an email from Mr. Lavergne, the purported inventor, stating systems within the housing will infringe (collective Exhibit 3).

WHEREFORE, PHC respectfully requests the Court exclude and preclude Plaintiff from offering evidence regarding systems with testing equipment not within or inside explosion proof housing.

Dated: January 8th, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 8th day of January 2019, a copy of the foregoing was served on counsel of record listed below via the Court's ECF system:

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